

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA

v.

WILLIE DAVIS DEWHART

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CR. NO. 2:06-CR-94-WKW

MOTION TO CONTINUE HEARING

Comes now the United States of America, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and as grounds for the Motion to Continue Hearing, states as follows:

1. A hearing to determine defendant's mental competency was set for April 10, 2008. The hearing was continued on motion of the government when a review of the file and court record in this case indicated that an independent psychological evaluation was to have been conducted by a Dr. Daniel Koch of Mobile, Alabama. The undersigned had not received results and reports of any defense expert's examination of the defendant's mental condition, pursuant to Federal Rule of Criminal Procedure 12.2(c)(3). The Court granted the motion and continued the hearing until June 18, 2008.

2. On June 17, 2008, counsel for defendant filed an Emergency Motion to Continue Hearing (Doc. 60) to allow the defendant to receive, and furnish to government counsel, a copy of a report by Dr. Daniel Koch. The Court continued the hearing until August 1, 2008. It is the undersigned AUSA's recollection that the parties discussed having the report to the government at least three

weeks prior to the scheduled hearing to allow the government to evaluate the report and provide its' experts an opportunity to review the report.

3. To date, the government has not received a copy of the report.

4. The Government would request that the Court continue this matter to allow defendant to comply with the requirements of Rule 12.2(c)(3). In the alternative, the Government requests that the Court follow the procedure set out in F.R.Cr.P. 12.2(d)(2) and exclude any expert testimony/evidence which has not been disclosed to the Government as of the time of filing of this motion. If the Court determines that neither option requested is appropriate, the government would request that the Court allow the three expert witnesses, expected to be called for testimony by the government if the defendant presents witnesses to challenge the Bureau of Prisons (BOP) report, to testify by means of video conferencing. The three experts: Dr. Karen Milliner, at USMS-FMC Lexington, KY, and Dr. Chad Brinkley and Dr. Robert Denney, both at USMC-FP Springfield, MO, have assured the undersigned that the two facilities have video conferencing capabilities. In this way, should the defendant not present a challenge to the BOP report, the government has not unnecessarily burdened the witnesses and if the defendant does present some witness or report, the witnesses would have the opportunity to hear the testimony and/or evaluate the report tendered by the defendant without causing a delay in the proceedings.

4. Attorney for Defendant, Susan G. James, has been contacted but was not available to opine as to agreement or disagreement with the present motion.

Based on the facts stated above, the United States respectfully requests a continuance of the hearing or, in the alternative, that the Court disallow the use of any expert defense witness or permit government witnesses to present testimony via video conference.

Respectfully submitted this 17th day of July, 2008.

FOR THE UNITED STATES ATTORNEY
LEURA G. CANARY

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CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Susan G. James.

Respectfully submitted,

LEURA G. CANARY
UNITED STATES ATTORNEY

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